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ATTORNEY GENERAL
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL
DEBORAH J. COOPER

THE STATE OF NEW HAMPSHIRE



ATTORNEYS
DANIEL J. MULLEN
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GREGORY W. SWOPE
PETER T. FOLEY
STEVEN M. HOURAN
EVE H. OYER
LESLIE J. LUDTKE
ROBERT P. CHENEY, JR.

THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

May 4, 1983

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
JAMES E. TOWNSEND
ANNE R. CLARKE
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
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Mr. Thomas A. Swist, Chairman
Electricians Licensing Board
Hazen Drive
Concord, New Hampshire 03301

Re: Proposed Variance Regulation

Dear Mr. Swist:

In your memorandum dated April 18, 1983, you have inquired whether the New Hampshire Electricians Licensing Board may adopt a regulation providing that no variances to the 1981 National Electric Code may be granted without prior consent of the Electricians Licensing Board. It is my informal opinion that the proposed regulation is beyond the scope of the Board's regulatory authority and therefore invalid.

This question was indirectly answered in my February 7, 1983 opinion to you relating to the authority of the Laconia building inspector to authorize waivers of certain electrical installation requirements. The Board's rulemaking authority expressed in RSA 319-C:6-a generally relates to the licensing and professional conduct of electricians. Although the Board may supervise the professional conduct of its licensees, it must do so within the context of other statutes which provide authority to local governments to regulate construction. See RSA 156:1 and 2, and RSA 156-A:1, I, which authorizes localities to adopt BOCA basic building code.

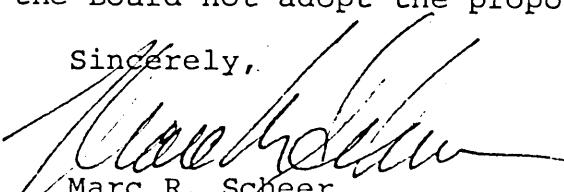
A regulation which would require advance approval of the proposed NEC waivers would in effect deprive local governments of their authority to regulate local construction. Such an exercise of rulemaking authority would be in excess of the



Board's powers under RSA 319-C:6-a, and, under the doctrine of Kimball v. N.H. Board of Accountancy, 118 N.H. 567 (1978), would be invalid. Also, such rulemaking by the Board would in effect impliedly repeal the powers of local building officials, a result which is not favored by the New Hampshire Supreme Court. See Opinion of the Justices, 107 N.H. 325, 328 (1966) (Implied repeal is not favored in this State).

Accordingly, adoption of the proposed rule would be in excess of the Board's authority and would conflict with the authority of local governments to regulate local construction. I therefore advise that the Board not adopt the proposed rule.

Sincerely,



Marc R. Scheer
Assistant Attorney General
Division of Legal Counsel

MRS:ab
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